IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

Crl.MC.No. 4347 of 2003()

CC.64/2003 of JUDL. MAGISTRATE OF FIRST CLASS-II, HARIPAD

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PETITIONERS:

1. GEORGE C. MATTOM, AGED 47,
   MATTOM HOUSE, POOMTHOPPU WARD,
   AMBALALPUZHA TALUK, ALAPPUZHA DISTRICT.

2. JAMES C. MATTOM, AGED 40,
   MATTOM HOUSE, POOMTHOPPU WARD,
   AMBALAPUZHA TALUK, ALAPPUZHA DISTRICT.

BY ADV. SRI.M.NARENDRA KUMAR
SRI.SALISH ARAVINDAKSHAN
SRI.ARUL KUMAR.P

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
   PUBLIC PROSECUTOR, HIGH COURT OF
   KERALA, ERNAKULAM.

2. SATHEESH VARGHESE, AGED 46,
   S/O. MATHEW VARGHESE, C.P. MANDIRAM,
   PUTHUKANDOM MURI, KARTHIKAPPALLY P.O.,
   HARIPAD, ALAPPUZHA DISTRICT.

BY ADV. SRI.P.VIJAYA BHANU
SRI.P.M.RAFIQ
PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR FOR R1

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 28-6-2007, THE COURT ON 05/07/2007 PASSED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl.R.P. No. 4347 of 2003

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Dated:

O R D E R

In this petition filed under Sec. 482 Cr.P.C. the petitioners who are accused Nos. 1 and 2 in C.C. 64 of 2003 on the file of the J.F.C.M.- II, Harippad for an offence punishable under Sec. 379 I.P.C. seeks to quash C.C. 64 of 2003 on the file of the said Magistrate registered on the basis of Annexure II protest complaint.

2. heard Adv. Sri. A. Salish, the learned counsel appearing for the petitioners and Adv. Sri. Vijayabhanu, the learned counsel appearing for the 2nd respondent.

3. The learned counsel appearing for the 2nd respondent/complainant made the following submissions before me in support of the cognizance. It was on being satisfied that the vehicle was dishonestly taken out of the posession from the complainant that the learned Magistrate took cognizance of the

offence notwithstanding the fact that the refer report filed by the police. In the light of the decision in State of M.P. v. Awadh Kishore Gupta and Others – 2004 (1) SCC 691, Annexures A to F to this petition filed under Sec. 482 Cr.P.C. the cannot be treated as evidence without being tested and duly proved and this Court should not act upon those annexures.

3. I am afraid that I cannot agree with the above submissions. The case of the prosecution is as follows:-

As per Annexure A agreement dated 18-6-1997, the complainant (Satheesh Varghese) purchased a brand new Maruthi Car bearing Chasis No. 208138 D for a sum 2, 33,000/- from the petitioners herein. Out of the said amount Rs. 83,000/- was to be paid in cash and finance was arranged by the petitioners herein for the balance amount of Rs. 1,50,000/- with M/s. ALPIC Finance Limited. the Car was delivered over to the complainant with all accessories after receiving a sum of Rs. 50,000/- in cash. The complainant was to pay the balance amount of Rs. 33,000/- within 20 days from 18-6-1997. The complainant defaulted payment not only to the financier but also to the petitioners. Thereupon the financier exercised his right to

re-possess the vehicle and took the Car from out of the possession of the complainant. The complainant lodged a complaint before the police alleging offences punishable under Sections 380 and 34 I.P.C. which was registered as Crime No. 173 of 2001 of Thrikkunnapuzha Police Station. After investigation, the police came to the conclusion that the vehicle was lawfully repossessed by the financier consequent on the default committed by the complainant in paying the higher purchase dues. On being convinced that the vehicle was repossessed by the financier in accordance with the contract, the police filed Annexure G refer report before the Magistrate. Upon receipt of notice of the refer charge the complainant filed Annexure-H protest complaint reiterating his earlier allegations. It was on the said protest complaint that the Magistrate took cognizance of the offence.

4. The complainant has absolutely no grievance against the financier who repossessed the vehicle. Similarly, he has no case that he has discharged the liability either towards the petitioners herein or towards the financier. As held by the Apex Court in ***Charanjit Singh Chadha v. Sudhir Mehra – 2001***

AIR SCW 3487 the offence under Sec. 378 I.P.C. will not lie in the absence of a dishonest intention on the part of the financier in repossessing the vehicle. Since there cannot be any dishonest intention in repossessing the vehicle, consequent on the default committed by the loanee in complying with the terms of the agreement. See also ***Sundaram Finance v. State of Kerala – AIR 1966 SC 1178.***

5. It cannot be observed as a rule of universal application that Annexures to a petition filed under Sec. 482 Cr.P.C. should not be acted upon by the High Court. The decision of the Apex Court in ***State of Orissa v. Debendra Nath Padhi – 2005 (1) SCC 568*** will indicate that the High Court will within its right in considering unimpeachable evidence of sterling equity produced by the accused along with his petition filed under Sec. 482 Cr.P.C. for quashing the charge against him.

The result of the foregoing discussion is that the cognizance taken by the Magistrate on the basis of protest complaint was bad in law. Annexure -H protest complaint as well as proceedings initiated thereon as C.C. No. 64 of 2003 on the file of J.F.c.m. - I, Harippad are accordingly, quashed.

This Crl. M.C . is allowed as above.

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